

House File 643 - Introduced

HOUSE FILE 643

BY COMMITTEE ON ENVIRONMENTAL
PROTECTION

(SUCCESSOR TO HSB 148)

(COMPANION TO LSB 2483SV BY
COMMITTEE ON AGRICULTURE)

A BILL FOR

1 An Act relating to environmental protection, by transferring
2 certain powers and duties to the department of agriculture
3 and land stewardship, providing an appropriation, and
4 including effective date provisions.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

WATER RESOURCES COORDINATING COUNCIL

Section 1. Section 466B.2, subsection 2, Code 2011, is amended by striking the subsection.

Sec. 2. Section 466B.3, subsection 1, Code 2011, is amended to read as follows:

1. *Council established.* A water resources coordinating council is established within the ~~office of the governor~~ department of agriculture and land stewardship.

Sec. 3. Section 466B.3, subsection 4, paragraph c, Code 2011, is amended by striking the paragraph.

Sec. 4. Section 466B.3, subsection 4, paragraph 1, unnumbered paragraph 1, Code 2011, is amended to read as follows:

The ~~governor~~ secretary, who shall be the chairperson, or the ~~governor's~~ secretary's designee. As the chairperson, and in order to further the coordination efforts of the council, the ~~governor~~ secretary may invite representatives from any other public agency, private organization, business, citizen group, or nonprofit entity to give public input at council meetings, provided the entity has an interest in the coordinated management of land resources, soil conservation, flood mitigation, or water quality. The ~~governor~~ secretary shall also invite and solicit advice from the following:

Sec. 5. Section 466B.3, subsection 5, paragraph a, Code 2011, is amended to read as follows:

a. The council shall be convened by the ~~office of the governor~~ secretary of agriculture at least quarterly.

Sec. 6. Section 466B.3, subsection 6, paragraph c, Code 2011, is amended to read as follows:

c. The council shall develop recommendations for policies and funding promoting a watershed management approach to reduce the adverse impact of future flooding on this state's residents, businesses, communities, and soil and water quality. ~~Policy and funding recommendations shall be submitted to the~~

1 ~~governor and the general assembly not later than November~~
2 ~~15, 2009.~~ The council shall consider policies and funding
3 options for various strategies to reduce the impact of
4 flooding including but not limited to additional floodplain
5 regulation; wetland protection, restoration, and construction;
6 the promulgation and implementation of statewide storm water
7 management standards; conservation easements and other land
8 management; perennial ground cover and other agricultural
9 conservation practices; pervious pavement, bioswales, and
10 other urban conservation practices; and permanent or temporary
11 water retention structures. In developing recommendations,
12 the council shall consult with hydrological and land use
13 experts, representatives of cities, counties, drainage and
14 levee districts, agricultural interests, and soil and water
15 conservation districts, and other urban and regional planning
16 experts.

17 Sec. 7. Section 466B.5, Code 2011, is amended to read as
18 follows:

19 **466B.5 Regional watershed assessment, planning, and**
20 **prioritization.**

21 1. *Regional watershed assessment program.* The department of
22 natural resources shall create a regional watershed assessment
23 program. The program shall assess all the regional watersheds
24 in the state.

25 a. The statewide assessment shall be conducted at the rate
26 of approximately one-fifth of the watersheds per year, and an
27 initial full assessment shall be completed within five years.
28 Thereafter, the department of natural resources shall review
29 and update the assessments on a regular basis.

30 b. Each regional watershed assessment shall provide a
31 summary of the overall condition of the watershed. The
32 information provided in the summary may include land use
33 patterns, soil types, slopes, management practices, stream
34 conditions, and both point and nonpoint source impairments.

35 c. In conducting a regional watershed assessment, the

1 department of natural resources may provide opportunities for
2 local data collection and input into the assessment process.

3 2. *Planning and prioritization.* In conducting the regional
4 watershed assessment program, the department of natural
5 resources shall provide hydrological and geological information
6 sufficient for the water resources coordinating council to
7 prioritize watersheds statewide and for the various communities
8 in those watersheds to plan remedial efforts in their local
9 communities and subwatersheds.

10 3. *Report to council.* Upon completion of the statewide
11 assessment, and upon updating the assessments, the department
12 of natural resources shall report the results of the assessment
13 to the council and the general assembly, and shall make the
14 report publicly available.

15 Sec. 8. Section 466B.6, subsection 1, Code 2011, is amended
16 to read as follows:

17 1. *Facilitation of community-based subwatershed plans.* After
18 the ~~department's~~ department of natural resources' completion
19 of the initial regional watershed assessment, and after the
20 council's prioritization of the regional watersheds, the
21 council shall designate one or more of the agencies represented
22 on the council to facilitate the development and implementation
23 of local, community-based subwatershed improvement plans.

24 Sec. 9. Section 466B.7, Code 2011, is amended to read as
25 follows:

26 **466B.7 Community-based subwatershed monitoring.**

27 1. *Monitoring assistance.* After completion of the
28 statewide regional watershed assessment and prioritization,
29 and throughout the implementation of local community-based
30 subwatershed improvement plans, the department of natural
31 resources shall assist communities with the monitoring and
32 measurement of local subwatersheds. The monitoring and
33 measurement shall be designed for the particular needs of
34 individual communities.

35 2. *Data collection and use.* Local communities in which

1 the department of natural resources conducts subwatershed
2 monitoring shall use the information to support subwatershed
3 planning activities, do local data collection, and identify
4 priority areas needing additional resources. Local communities
5 shall also collect data over time and use the data to evaluate
6 the impacts of their management efforts.

7 Sec. 10. Section 466B.8, Code 2011, is amended to read as
8 follows:

9 **466B.8 Wastewater and storm water infrastructure assessment.**

10 The department of natural resources shall assess and
11 prioritize communities within a watershed presenting the
12 greatest level of risk to water quality and the health of
13 residents. This prioritization shall include both sewered and
14 unsewered communities.

15 Sec. 11. Section 466B.9, Code 2011, is amended to read as
16 follows:

17 **466B.9 Rulemaking authority.**

18 The department of natural resources and the department
19 of agriculture and land stewardship shall have the power and
20 authority reasonably necessary to carry out the duties imposed
21 by this chapter. As to the department of natural resources,
22 this includes rulemaking authority to carry out the regional
23 watershed assessment program described in section 466B.5. As
24 to the department of agriculture and land stewardship, this
25 includes rulemaking authority to assist in the implementation
26 of community-based subwatershed improvement plans.

27 DIVISION II

28 WATER QUALITY PROTECTION

29 Sec. 12. Section 161A.4, subsection 2, Code 2011, is amended
30 by adding the following new paragraph:

31 NEW PARAGRAPH. *j.* To provide state administration of
32 section 319 of the federal Clean Water Act as defined in
33 section 455B.291. The department of natural resources shall
34 provide assistance in the preparation of the report required
35 pursuant to 33 U.S.C. § 1329.

1 Sec. 13. Section 161C.4, subsection 2, Code 2011, is amended
2 to read as follows:

3 2. The fund shall be divided into ~~two~~ three accounts,
4 the water quality protection projects account, ~~and~~ the water
5 protection practices account, and the clean water account.

6 a. The ~~first~~ water quality protection projects account
7 shall be used to carry out water quality protection projects
8 to protect the state's surface and groundwater from point and
9 nonpoint sources of contamination.

10 b. The ~~second~~ water protection practices account shall be
11 used to establish water protection practices with individual
12 landowners including but not limited to woodland establishment
13 and protection, establishment of native grasses and forbs,
14 sinkhole management, agricultural drainage well management,
15 streambank stabilization, grass waterway establishment, stream
16 buffer strip establishment, and erosion control structure
17 construction. Twenty-five percent of funds appropriated to
18 the water protection practices account shall be used for
19 woodland establishment and protection, and establishment of
20 native grasses and forbs. Soil and water conservation district
21 commissioners shall give priority to applications for practices
22 that implement their soil and water resource conservation plan.

23 c. The clean water account shall be used for purposes of
24 administering section 319 of the federal Clean Water Act as
25 defined in section 455B.291. Any moneys appropriated by the
26 general assembly for purposes of providing state administration
27 of section 319 of the federal Clean Water Act as defined in
28 section 455B.291 and any other moneys available to and obtained
29 or accepted by the division for such purposes shall be credited
30 to the clean water account.

31 Sec. 14. Section 455B.193, Code 2011, is amended to read as
32 follows:

33 **455B.193 Qualifications for collection of credible data.**

34 For purposes of this part, all of the following shall apply:

35 1. Data is not credible data unless the data originates

1 from studies and samples collected by the department of
2 natural resources or the department of agriculture and land
3 stewardship, a professional designee of ~~the department~~ one of
4 the departments, or a qualified volunteer. For purposes of
5 this subsection, "*professional designee*" includes governmental
6 agencies other than one of the department departments, and a
7 person hired by, or under contract for compensation with, one
8 of the department departments to collect or study data.

9 2. All information submitted by a qualified volunteer shall
10 be reviewed and approved or disapproved by the department of
11 natural resources or the department of agriculture and land
12 stewardship. The qualified volunteer shall submit a site
13 specific plan with data which includes information used to
14 obtain the data, the sampling and analysis plan, and quality
15 control and quality assurance procedures used in the monitoring
16 process. The qualified volunteer must provide proof to the
17 applicable department that the water monitoring plan was
18 followed. The applicable department shall review all data
19 collected by a qualified volunteer, verify the accuracy of the
20 data collected by a qualified volunteer, and determine that all
21 components of the water monitoring plan were followed.

22 3. The department of natural resources and the department of
23 agriculture and land stewardship shall retain all information
24 submitted by a qualified volunteer submitting the information
25 for a period of not less than ten years from the date of receipt
26 by the department. All information submitted shall be a public
27 record.

28 4. The department of natural resources and the department of
29 agriculture and land stewardship shall adopt rules establishing
30 requirements for a person to become a qualified volunteer.

31 5. The department of natural resources and the department of
32 agriculture and land stewardship shall develop a methodology
33 for water quality assessments as used in the section 303(d)
34 lists and assess the validity of the data.

35 Sec. 15. Section 455B.194, subsection 1, unnumbered

1 paragraph 1, Code 2011, is amended to read as follows:

2 The department of natural resources and the department of
3 agriculture and land stewardship shall use credible data when
4 doing any of the following:

5 Sec. 16. Section 455B.195, subsection 1, paragraphs e
6 through i, Code 2011, are amended to read as follows:

7 e. If a pollutant causing an impairment is unknown, the
8 water of the state may be placed on a section 303(d) list.
9 However, the department of natural resources or the department
10 of agriculture and land stewardship, as applicable, shall
11 continue to monitor the water of the state to determine the
12 cause of impairment before a total maximum daily load is
13 established for the water of the state and a water of the state
14 listed with an unknown status shall retain a low priority for
15 a total maximum daily load development until the cause of the
16 impairment is determined unless ~~the~~ either department, after
17 taking into consideration the use of the water of the state and
18 the severity of the pollutant, identifies compelling reasons as
19 to why the water of the state should not have a low priority.

20 f. When evaluating the waters of the state, the department
21 of natural resources and the department of agriculture and land
22 stewardship, as applicable, shall develop and maintain three
23 separate listings including a section 303(d) list, a section
24 305(b) report, and a listing for which further investigative
25 monitoring is necessary. The section 305(b) report shall be
26 a summary of all potential impairments for which credible
27 data is not required. If credible data is not required for a
28 section 305(b) report, the placement of a water of the state
29 on any section 305(b) report alone is not sufficient evidence
30 for the water of the state's placement on any section 303(d)
31 list. When developing a section 303(d) list, the ~~department~~
32 is departments are not required to use all data, but ~~the~~
33 ~~department~~ shall assemble and evaluate all existing and readily
34 available water quality-related data and information. The
35 ~~department~~ departments shall provide documentation to the

1 regional administrator of the federal environmental protection
2 agency to support the state's determination to list or not to
3 list its waters.

4 *g.* The department of natural resources and the department
5 of agriculture and land stewardship, as applicable, shall take
6 into consideration any naturally occurring condition when
7 placing or removing any water of the state on any section
8 303(d) list, and establishing or allocating responsibility for
9 a total maximum daily load.

10 *h.* Numerical standards shall have a preference over
11 narrative standards. A narrative standard shall not constitute
12 the basis for determining an impairment unless the department
13 of natural resources and the department of agriculture and land
14 stewardship, as applicable, identifies specific factors as to
15 why a numeric standard is not sufficient to assure adequate
16 water quality.

17 *i.* If the department of natural resources and the department
18 of agriculture and land stewardship, as applicable, has
19 obtained credible data for a water of the state, the department
20 may also use historical data for that particular water of the
21 state for the purpose of determining whether any trends exist
22 for that water of the state.

23 Sec. 17. Section 455B.195, subsection 2, Code 2011, is
24 amended to read as follows:

25 2. This section shall not be construed to require or
26 authorize the department of natural resources or the department
27 of agriculture and land stewardship to perform any act listed
28 in section 455B.194, subsection 1, not otherwise required or
29 authorized by applicable law.

30 Sec. 18. Section 455B.195, Code 2011, is amended by adding
31 the following new subsections:

32 NEW SUBSECTION. 3. The division of soil conservation of the
33 department of agriculture and land stewardship shall implement
34 total maximum daily loads assigned to nonpoint sources and
35 agricultural sources through voluntary programs. The division

1 shall implement waste load allocations assigned to agricultural
2 sources or concentrated animal feeding operations if such
3 sources are required to obtain a national pollutant discharge
4 elimination system permit. The department of natural resources
5 shall implement all other waste load allocations.

6 NEW SUBSECTION. 4. The division of soil conservation
7 of the department of agriculture and land stewardship shall
8 develop and implement a water quality management plan required
9 by 33 U.S.C. § 1329 as it relates to total maximum daily
10 loads, nonpoint sources, agricultural sources, and effluent
11 limitations for concentrated animal feeding operations.
12 The department of agriculture and land stewardship and the
13 department of natural resources shall jointly submit water
14 quality management plans to the United States environmental
15 protection agency.

16 Sec. 19. ENVIRONMENT FIRST FUND APPROPRIATION. There is
17 appropriated from the environment first fund created in section
18 8.57A to the soil conservation division of the department of
19 agriculture and land stewardship for the fiscal year beginning
20 July 1, 2012, and ending June 30, 2013, the following amount,
21 or so much thereof as is necessary, to be used for the purposes
22 designated:

23 For water quality monitoring, including salaries, support,
24 maintenance, and miscellaneous purposes:

25 \$ 2,955,000

26 Sec. 20. TRANSITIONAL PROVISIONS.

27 1. The department of natural resources shall cooperate
28 with the department of agriculture and land stewardship to
29 assist in the transfer of powers and duties to the department
30 of agriculture and land stewardship, as provided in sections
31 455B.193 through 455B.195, as amended by this Act.

32 2. By August 1, 2011, the department of natural resources
33 shall provide the department of agriculture and land
34 stewardship with copies of any outstanding contracts relating
35 to the administration of any duties addressed in this Act.

1 3. The department of natural resources shall assign and the
2 department of agriculture and land stewardship shall assume all
3 outstanding contracts entered into by the department of natural
4 resources and the United States environmental protection agency
5 related to the use of moneys for purposes of section 319 of the
6 federal Clean Water Act, total maximum daily load development
7 and nonpoint source management plans. Contracts related to
8 enforcement or enforcement investigation are not included under
9 this subsection.

10 Sec. 21. EFFECTIVE DATES.

11 1. This division of this Act takes effect July 1, 2011,
12 except as provided in subsection 2.

13 2. The sections of this division amending sections 161A.4
14 and 161C.4 take effect November 1, 2011.

15 3. The sections of this division amending sections 455B.193
16 through 455B.195 take effect November 1, 2012.

17 EXPLANATION

18 GENERAL. This bill amends provisions relating to water
19 protection programs in this state, including by providing
20 for the administration of the programs by the department of
21 natural resources and the department of agriculture and land
22 stewardship.

23 WATER RESOURCES COORDINATING COUNCIL. The bill amends Code
24 chapter 466B which currently provides for the protection of
25 surface water in this state by establishing a water resources
26 coordinating council within the office of the governor. The
27 council includes members representing a number of heads of
28 state agencies as well as the deans of colleges of board
29 of regents institutions. The council is responsible for
30 coordinating governmental efforts to improve water quality
31 in an efficient and fiscally responsible manner. The bill
32 transfers the council from the office of the governor to the
33 secretary of agriculture, and provides that the secretary
34 of agriculture and not the governor serves as the council's
35 chairperson. A number of provisions in the Code chapter refer

1 to the department of natural resources as simply "department".
2 The bill includes the full name of the department, but does not
3 change its powers or duties.

4 FEDERAL CLEAN WATER ACT — TRANSFER OF CERTAIN POWERS
5 AND DUTIES. The bill provides for the administration of
6 responsibilities involving section 319 of the federal Clean
7 Water Act, including by transferring powers and duties from
8 the department of natural resources to the department of
9 agriculture and land stewardship. It establishes an account
10 for moneys used to administer the nonpoint source program under
11 the control of the soil conservation division of the department
12 of agriculture and land stewardship.

13 The bill provides for the compilation of credible data by
14 the two departments when monitoring water quality in the state,
15 including establishing the total maximum daily load for any
16 water of the state. The bill authorizes the division of soil
17 conservation to implement total maximum daily loads assigned
18 to nonpoint sources and agricultural sources, and to develop
19 and implement a water quality management plan. A total maximum
20 daily load is the maximum amount of a pollutant that a water
21 body may receive and still meet the state's water quality
22 standards.

23 The bill appropriates moneys from the environment first fund
24 to the soil conservation division for purposes of water quality
25 monitoring.

26 The bill includes transitional provisions requiring
27 the department of natural resources to cooperate with the
28 department of agriculture and land stewardship to assist
29 in the transfers of powers and duties to the department of
30 agriculture and land stewardship, including the assignment of
31 all outstanding contracts.

32 The bill includes a number of effective date provisions
33 which require that the transition be complete by November 1,
34 2012.